IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11902 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHILPI PRINTS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11902 of 2003

MR PR NANAVATI for Petitioner No. 1

MR DN PATEL for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 27/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Central Government Standing Counsel, waives service of rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal and is being disposed of by this judgment.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the show cause notices dated 24.6.2002, 8.7.2002 and 24.1.2003 at Annexure A collectively to the petition. The petitioner has also prayed for a direction to the respondents to decide the petitioner's claim for refund of duty amounting to Rs.7,36,671.60 Ps. in view of the order dated 30.10.2001 passed by the Commissioner of Central Excise (Appeals) setting aside the imposition of duty which was earlier made by Order in Original dated 11.12.2000.

It is, of course, stated that the Order in Original had imposed duty to the tune of RS.7,36,671.60 Ps. and also penalty of Rs. 1 lakh. In appeal the Commissioner of Central Excise by order dated 30.10.2001 set aside the imposition of duty and reduced the penalty under section 209A of the Act to Rs.1 lakh.

Aggrieved by the said order in so far as penalty is concerned, the petitioner has carried the matter in appeal before the Central Excise and Service Tax Tribunal which has granted unconditional stay against recovery of penalty. Therefore the petitioner's case is that the controversy relating to duty for the relevant period is concluded in favour of the petitioner and the respondents are required to refund the excise duty to the tune of Rs.7,36,671.60 Ps. which was earlier paid by the petitioner under TR-6 Challan dated 18.10.1995.

3. Mr. P.R. Nanavati, learned counsel for the petitioner, has further tendered at the hearing today copies of order dated 18.11.2003 passed by the Commissioner of Central Excise and Customs (Appeals), Surat allowing the petitioner's Appeal Nos.798, 799 and 800 of 2003 and quashing and setting aside the aforesaid show cause notices dated 24.6.2002, 8.7.2002 and 24.1.2003 as time bared, i.e., on the ground that the show-cause notices were issued after a period of five years and proceedings were time bared under section 11-A of the Central Excise Act, 1954 ('the Act' for short).

4. At the last hearing, Mr. D.N. Patel, learned Senior Central Government Standing Counsel, had prayed for time to ascertain whether the Department has challenged the order dated 30.10.2001 of the Commissioner

(Appeals) on the basis of which refund is sought by the petitioner. We had granted time specifically stating that no further time would be granted after 27.1.2004 and the petition will be taken up for disposal peremptorily today.

5. At the hearing today, Mr. Patel has stated that so far no appeal has been preferred against the order dated 30.10.2001 passed by Commissioner (Appeals). Since the orders allowing Appeal Nos.798, 799 and 800 of 2003 quashing and setting aside the show-cause notices have been passed only recently by the Commissioner of Central Excise and Customs (Appeals), Surat on 18.11.2003, the Department will take some time to decide whether the orders dated 18.11.2003 are required to be challenged or not.

6. Having heard the learned counsel appearing for the parties, we are of the view that after the order was passed on 30.10.2001 (on the basis of which the refund is sought by the petitioner), the Department had more than two years time and hence no further indulgence deserves to be shown to the respondent authorities. Since there is no dispute to the fact that the petitioner had paid Excise duty of Rs.7,36,671.60 on 18.10.1995 by TR-6 Challan confirmed by the Order-in-Original dated 11.12.2000 and the said imposition of duty has been set aside by the Commissioner of Central Excise and Customs (Appeals) vide his order dated 30.10.2001 and since only penalty of Rs. 1 lakh has been imposed on the petitioner firm, it would be in the interest of justice to direct the respondent authorities to consider the petitioner's claim for refund of Rs.7,36,671.60 Ps. after keeping apart Rs.1 lakh which is ordered to be recovered as penalty as per the order dated 30.10.2001 passed by the Commissioner of Central Excise.

7. In view of the above discussion, we allow this petition. Since the show cause notices (at Annexure "A" colly.) have already been quashed by the Commissioner of Central Excise and Customs (Appeals), Surat, by order dated 18.11.2003, no relief is required to be granted to the petitioner in respect of the said show-cause notices.

As far as the petitioner's prayer for directing the respondent authorities to consider the petitioner's claim for refund application dated 21.3.2002 at Annexure C to the petition is concerned, the same is granted. The respondents are directed to consider the said application for refund alongwith interest (after keeping apart Rs.One

lakh as indicated in para 6 hereinabove) in accordance with law as early as possible and in any case within one month from the date of receipt of the writ of this Court and in light of the observations made in this judgment.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)